No. 2479

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. PAUL THOMPSON, Appellant.

vs.

EMMETT IRRIGATION DISTRICT and W. H. SHANE, N. B. BARNES and E. J. REYNOLDS, as Directors, and R. B. SHAW as Treasurer, of Emmett Irrigation District,

Appellees.

Brief of Appellant.

On Appeal from the United States District Court for the District of Idaho, Southern Division.

J. H. RICHARDS,
OLIVER O. HAGA,
McKEEN, F. MORROW,
Solicitors for Appellant.
Residence: Boise, Idaho.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2479.

J. PAUL THOMPSON, *Appellant.*

vs.

EMMETT IRRIGATION DISTRICT, AND W. H. SHANE, N. B. BARNES AND E. J. REYNOLDS, AS DIRECTORS, AND R. B. SHAW AS TREASURER, OF EMMETT IRRIGATION DISTRICT, *Appellees.*

BRIEF OF APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from an order dismissing appellant's Bill. Appellant alleges in his Bill that the defendant, Emmett Irrigation District, was organized under the irrigation district laws of the State of Idaho on September 10th, 1910; that on December 3rd, 1910, the electors of the District authorized the issuance of the negotiable coupon bonds of the district to the amount of $1,100,000,00; that thereafter all proceedings relating to the organization of the District and authorization of such bonds were confirmed by the District Court for the proper county, and on appeal the Supreme Court of the State affirmed the judgment of the District Court confirming the organization of the District and approving all proceedings relative to the authorization and issuance of said bonds; that thereafter the District sold approximately $900,000.00 of said bonds.

That appellant, relying upon the judgment of the Supreme Court of the State confirming the proceedings for

the organization of the District and for the issuance of such bonds, and relying upon the recitals contained in such bonds, purchased for a valuable consideration, prior to January 1st, 1914, $101,000.00 of said bonds.

That after the District had sold its bonds, the Board of Directors of the District determined the benefits which would accrue to the several tracts or subdivisions of land within the District from the sale of such bonds, and apportioned such benefits accordingly; that the action of the Board in apportioning such benefits was approved by the District Court for the proper county on the —— day of June, 1913, and that such decree has become final.

That the interest maturing on such bonds on January first and July first, 1913, has been paid, but that the interest coupons maturing January 1st, 1914, have not been paid; and that appellant is the owner of coupons maturing January 1st, 1914, to the amount of $3,030.00. That on October 22nd, 1913, the Board of Directors of the District levied an assessmet against all the lands in the District for the payment of the interest maturing January first and July first, 1914; that a large number of the land owners and taxpayers in the District *paid* the taxes so levied and assessed against their lands for the payment of interest on the bonds held by appellant and other bondholders.

That the District and its officers failed and neglected to use the money so collected for the payment of such interest, but allowed default to be made on all coupons maturing January 1st, 1914.

That appellant on January 9th, 1914, tendered his coupons to the Treasurer of the District and demanded payment thereof, but the Treasurer, notwithstanding he had in

his possession and in his custody and control the interest fund of the District, collected for the payment of such coupons, to an amount exceeding the face value of the coupons so tendered, declined to use such interest money for the payment of appellant's coupons, and declined to pay any of such coupons.

That defendants wrongfully and without cause declined to apply the interest money collected from the taxpayers of the District to the payment of interest on the bonds, and that unless defendants be enjoined and restrained they will return such money to the persons from whom the same was collected, or will divert such money to other purposes and will not apply it to the payment of interest or to the purpose for which it was levied and collected.

That under the laws authorizing the issuance of such bonds nothing but interest thereon will be paid during the first ten years, and that thereafter a small per cent of the bonds must be retired each year for a period of ten years, to the end that the entire issue will be paid off at the end of the twentieth year. That default in the future installments will be made by the defendants from time to time as each installment matures. That should appellant and other holders of said bonds be compelled to bring suit on each installment of interest as the same becomes due, or for the principal as the same becomes due, numerous suits will be required; and if the bringing of such suits be delayed until all of the bonds have matured irreparable injury will be sustained by the bondholders because of loss of interest and the uncertainties and unsettled conditions which will prevail in the meantime, and which will wholly destroy the market value of the bonds. That it will be impossible for the District and the taxpayers thereof to pay the whole of said issue and accumulated interest by one

assessment; that the same can only be paid serially as provided in the law.

That in order to protect appellant and other bondholders, it is necessary that the validity of the bonds should be determined immediately, and that they have appropriate process for enforcing the payment of interest and principal as the same become due.

That the defendants are counseling and advising the taxpayers of the District not to pay their taxes, and are making no effort to collect the same, but they are encouraging by their actions and statements default in the payment of such taxes and are encouraging agitation and litigation against the bondholders, and fomenting a spirit of repudiation among the taxpayers, with a view of ultimately repudiating the bonds, and inviting suits by taxpayers, attacking the validity of the bonds and the right of the District to pay interest thereon, and by such actions and conduct are greatly depreciating the market value of the bonds and causing irreparable injury to appellant and other bondholders.

That defendants sometimes contend that about one-fifth of the bonds issued were sold without consideration, or without adequate consideration; but defendants do not state or pretend to know what bonds were so issued, and do not identify them by number or otherwise so that bondholders or others can ascertain what bonds it is claimed were illegally sold or were issued without consideration. That such statements of the District officers are being widely circulated, and are frequently made and repeated, and as a result thereof the taxpayers are defaulting in the payment of their taxes.

That statements have repeatedly been made by the defendants that the District will not pay said bonds unless

compelled to do so by a decree or judgment of the Court; that the contentions, agitations and controversies over such bonds are becoming general throughout the District, and are being circulated by taxpayers and officers of the District among financial institutions and investors dealing in such bonds; that numerous suits will be instituted by taxpayers attacking the validity of such bonds and the validity of the assessments levied for the payment of such interest. That one such suit has already been instituted in the District Court of the State, wherein it is sought to restrain the Treasurer of the District from collecting or attempting to collect any tax from plaintiff in such suit; that other like suits will be instituted at any time; that in such suits judgments may be entered against the District or the officers thereof, affecting the validity of the bonds and the collection of taxes, without notice to or knowledge thereof by the holders of the bonds, who are widely scattered and who reside mostly, if not entirely, in other States and at such distances from the place where such suits will be brought that they could not, except by the merest chance, learn that such suits have been brought or were pending. That because of the defendants' attitude towards the bonds, no adequate or proper defense to such suits will be made by the defendants.

That appellant is an innocent holder for value, without notice, and that unless defendants be restrained and enjoined they will either divert or appropriate to other uses, or return to the taxpayers, the moneys collected for the payment of interest on the bonds, and will allow default to be made in the steps and proceedings required to make legal or valid the sale of property in the District for delinquent taxes, and will permit the taxpayers who have paid no taxes to wholly escape the penalties of such default and escape the payment of such taxes, all of which will

render appellant's bonds and the other bonds of the District unsalable, and will greatly depreciate, if not entirely destroy, the market value thereof, and will result in numerous suits and long and protracted litigation, and otherwise cause great and irreparable injury to appellant and other bondholders.

Appellant prays for a decree enjoining defendants from diverting the interest money heretofore collected, or against using the same for any purpose except the payment of interest; that the bonds held by appellant may be decreed legal and valid obligations of the District, and that he may have judgment for the coupons now due, and that defendants may be restrained from encouraging default on the part of the taxpayers, and from doing any act or thing which may depreciate the value of the bonds, and from allowing or permitting default in the proceedings required to accomplish a valid sale of property for delinquent taxes, and that they be enjoined from instituting actions or proceedings attacking the validity of the bonds; and for such other and further relief as the nature and circumstances of the case may require.

The original Bill and amendments thereto will be found on pages 1 to 26 of the record. A motion was made to dismiss, the basis of the motion was in substance that the bill did not state a cause for equitable relief, and that appellant had an adequate remedy at law. From the order sustaining appellees' motion appellant appeals.

SPECIFICATION OF ERRORS.

Appellant assigns the following errors on his appeal herein:

1. That the Court erred in holding and deciding that appellant had an adequate remedy at law.

2. That the Court erred in holding and deciding that the facts alleged in appellant's Bill, as amended, are insufficient upon which to base equitable jurisdiction.

3. That the Court erred in holding and deciding that it was not apparent from said Bill, as amended, that an action at law would not furnish a complete and adequate remedy in said cause.

4. That the Court erred in holding and deciding that the allegations in appellant's Bill, as amended, were not sufficient to justify a conclusion that the interest collected and now in the possession of the Treasurer of said District would be diverted, and in holding and deciding that it was necessary to show either an actual diversion of such interest fund, or further facts justifying the conclusion that there would be a diversion before appellant would be entitled to equitable relief.

5. That the Court erred in holding and deciding that there was no such probability of a multiplicity of suits as to justify a court of equity to take jurisdiction of said cause.

6. That the Court erred in holding and deciding that there was no reason for concluding that, if in an action at law upon the coupons the Court should hold in favor of appellant, the appellees would in the future decline to meet other interest payments as and when they fall due.

7. That the Court erred in holding and deciding that it was not improbable that a judgment in an action at law favorable to the appellant would be as effective in quieting the agitation pleaded in the Bill, as amended, and in establishing the market value of the bonds, as a decree of a court of equity, and in declining to take jurisdiction by reason thereof.

8. That the Court erred in holding and deciding that the appellees do not repudiate their liability to rightful

bondholders, but deny only that the appellant is such holder of the bonds of which he has possession.

9. That the Court erred in ordering and decreeing that appellant's Bill, as amended, did not set forth sufficient facts to entitle appellant to relief in equity.

10. That the Court erred in ordering and decreeing that appellant's Bill, as amended, be dismissed.

POINTS AND AUTHORITIES.

Section 723 of the Revised Statutes of the United States do not restrict the ancient jurisdiction of courts of equity or prohibit their exercising a concurrent jurisdiction with courts of law in cases where such concurrent jurisdiction has been previously upheld.

Wehrman vs. Conklin, 155 U. S. 314, 323; 39 L. Ed. 167, 172.

U. S. v. Leslie, 167 Fed. 670.

Burlington Sav. Bank v. Clinton, 106 Fed. 269, 276.

1 Pomeroy on Equity Jurisprudence (3d Ed.), Secs. 182, 276-278.

16 Cyc. 34.

Jurisdiction of courts of equity over trustees and the performance of their duties has existed from the earliest times and is unaffected by statutes, and it is immaterial that courts of law may under the statutes have concurrent jurisdiction and be able to render substantially the same relief.

1 Pomeroy, Equity Jurisprudence, (3d Ed.), Secs 100.

2 Story, Equity Jurisprudence (13th Ed.) 43.

Hayden v. Douglas County, 170 Fed. 24.

Oelrichs v. Williams, 82 U. S. 211; 21 L. Ed. 43.

Appellees stand in the relation of statutory trustees towards the bondholders of the District.

Vickery v. City of Sioux City, 104 Fed. 164, 166 and 168.

Farson v. City of Sioux City, 106 Fed. 278.

Burlington Sav. Bank v. Clinton, 106 Fed. 269, 275.

Olmsted v. City of Superior, 155 Fed. 172, 178.

Spidell v. Johnson, 128 Ind. 235; 25 N. E. 889.

McQuillin on Municipal Corporations, p. 4794.

The money collected by appellees for the payment of interest on the bonds of the District constitutes a trust fund which cannot be applied or diverted to other purposes.

Section 2410 and Sec. 2406, Rev. Stat. of Idaho, and cases cited *supra*.

While a special fund is provided by law to be collected by taxation on the lands in the District in proportion to the benefits received, the bonds are nevertheless general obligations of the District; but the statutory fund required to be levied is a trust fund and it cannot be diverted or appropriated to other purposes.

1 Dillon, Municipal Corporations (5th Ed.) p. 372.

2 Dillon, Municipal Corporations, (5th Ed.) p. 1390.

Burlington Sav. Bank v. Clinton, 111 Fed. 439.

The United States v. Fort Scott, 99 U. S. 152.

Fort Madison v. Fort Madison Water Co. 114 Fed. 292.

Vickery v. Sioux City, 115 Fed. 437.

King v. Superior, 117 Fed. 113.

Superior v. Marble Sav. Bank, 148 Fed. 7.

Olmstead v. Superior, 155 Fed. 172.

5 McQuillin Munic. Corp., p. 4793.

Bondholders may have mandatory injunction or other proper process commanding a municipal corporation through its trustees to levy and collect taxes required to be levied under the law.

Burlington Sav. Bank v. Clinton, 111 Fed. 439, 446.

Injunction will issue to suppress oppressive or interminable litigations or to prevent multiciplicity of suits. Such matters are special grounds of equity jurisdiction.

Ins. Co. v. Bailey, 13 Wall, 616; 20 L. Ed. 501.

Dows v. Chicago, 11 Wall. 108, 110; 20 L. Ed. 65.

State Railroad Tax Cases, 92 U. S. 575; 23 L. Ed. 663.

Nat. Bank v. Kimball, 103 U. S. 732; 26 L. Ed. 469.

6 Encyl. of U. S. Sup. Ct. Rep. 1040, and cases there cited.

When irreparable injury is spoken of, it is not meant that the injury is beyond the possibility of repair, or beyond the possibility of compensation and damages, but it must be of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law.

Donovan v. Pennsylvania Co. 199 U. S. 279, 305; 50 L. Ed. 192.

Where the actions of the municipality, its officers and taxpayers are of such a character as to cast a cloud upon the security of the bondholders or on the validity of the bonds, and thereby depreciate or destroy the market value or salability of the bonds, a court of equity will take jurisdiction to remove the cloud and determine the valadity of the bonds.

Spidell v. Johnson, 128 Ind. 235; 25 N. E. 889.

Voss et al. v. Murray et al. 50 Ohio St. Rep. 19.

The New York & New Haven R. R. Co. v. Schuyler. 17 N. Y. 592.

Earl v. Maxwell, 86 S. C. 1; 67 S. E. 962; 138 State Rep. 1012.

Magnuson v. Clithero, 101 Wis. 551; 77 N. W. 882.

Stebbins v. Perry County, 167 111. 567; 47 N. E. 1048.

Rosenbaum v. Foss, 4 S. Dak. 184; 56 N. W. 114.

Sherman v. Fitch, 98 Mass. 59.

It is not enough that there is a remedy at law. It must be plain and adequate and as practical and efficient to the ends of justice and to its prompt administration as the remedy in equity.

United States v. Union Pac. R. Co. 160 U. S. 51; 40 L. Ed. 319, 337.

Boyce v. Grundy, 2 Pet 210, 215.

When a court of equity has jurisdiction over a cause for any purpose, it may retain the cause for all purposes and proceed to a final determination of all the matters at issue, and may thus establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority.

1 Pomeroy, Equity Jurisprudence (3d Ed.) Sec. 181, and cases there cited.

Bisphan, Equity, Sec. 37.

ARGUMENT.

That appellant is entitled to relief is conceded, but it will be contended that he has an adequate remedy at law, and such was the decision of the District Court. The contention that the remedy at law is adequate is based on an erroneous view of the situation set forth in the bill. The

District Court assumed that judgment for the past-due coupons held by appellant was the gist of the action, when, as a matter of fact, the payment of the coupons is merely incidental to the far more important questions which must be settled and determined before appellant and other bondholders have received the protection to which they are justly entitled.

The Bill shows that the Emmett Irrigation District negotiated and sold $900,000.00 of negotiable coupon bonds payable to bearer; that the bondholders are numerous and widely scattered. Who they are and where they are and the number of bonds held by each are matters purely of conjecture. They are unknown to each other and their identity changes from day to day.

The value of appellant's bonds is not determined and the cloud which hangs over them is not removed by the payment of the coupons maturing January 1st, 1914, aggregating $3,030.00. To establish the value of appellant's bonds, aggregating $101,000.00, and to remove the uncertainty and the doubt as to their validity and to determine the proportionate interest which appellant has by virtue of his ownership of these bonds in the interest funds or taxes collected by the District is far more important than the immediate payment of the interest coupons referred to.

Concerted action on the part of all bondholders is impossible for, as stated above, they are not only numerous, but they are widely scattered and are unknown to each other. Yet full and adequate remedy cannot be obtained until the validity of all the bonds negotiated by the District has been established. If the District Court be right in its decision, then appellant with his $101,000.00 of bonds must be remediless until several hundred bondholders have separately come into Court in actions at law and prosecuted to final judgment their several claims. Until that

time and until that has been done there will be floating about in the financial circles and in the markets of the world bonds of the Emmett Irrigation District alleged or claimed to be worthless and invalid. That such claims, rumors, and charges necessarily destroy the market for all bonds of that issue and depreciate their value for all purposes cannot be denied.

Until the validity of all bonds outstanding has been determined the agitation alleged in the Bill against the payment of bond interest and the payment of taxes will continue. Until the validity of all bonds outstanding has been determined the District officers can not legally or equitably apportion the interest moneys collected from the taxpayers of the District. There can be no division pro rata among the bondholders until the amount of valid bonds has been determined or ascertained. The fund now on hand for the payment of interest being insufficient to pay the interest on all the bonds outstanding cannot be pro rated or paid over to appellant even on a judgment of law until the Court has determined the validity of all the outstanding bonds. It seems clear that a judgment at law on appellant's coupons would be wholly ineffectual. Even if the coupons were paid in full appellant should in equity be entitled to have the other uncertainties and doubts hanging over his securities determined once and for all, so that their market value may be reestablished and the possibility of contest in the future removed.

The bill shows the agitation in the District and the action being taken by appellees and the taxpayers. It shows that the interest tax was levied and has been partially collected; that the benefits received from the sale of the bonds have been apportioned among the land owners in the District in proportion to the benefits received and

that the taxes have been levied on that basis; that appelles, unless enjoined or restrained from so doing, will not take the other necessary steps required to collect the delinquent taxes, and that the interest collected from the land owners and now in the treasury of the District will be applied or diverted to other purposes, and not to the purposes for which it was collected; that judgments may be taken or entered in the State Courts in actions or suits between the taxpayers and the District declaring the bonds invalid, without notice to or knowledge thereof by the bondholders until after judgment has been entered. It would seem that a holder of these bonds should not be at this constant, imminent and menacing peril.

If the matter has to be determined in actions at law, as contended by appellees and as held by the District Court, there must necessarily be as many actions at law as there are bondholders, and the present uncertainty and injustice must continue until the most dilatory bondholder has come into Court and submitted his case to final judgment.

We submit that a full and comprehensive view of the situation confronting the bondholders must lead to the conclusion that the remedy at law is clearly insufficient and that there is here a just cause for equitable jurisdiction. It can not be denied that the remedy at law is neither as adequate or as full or complete as the relief that may be had in equity.

The Supreme Court, in United States v. Union Pacific R. R. Co. 160 U. S. 1; 40 L. Ed. 319, in considering whether the remedy at law in that case was sufficiently effectual to oust a court of equity of jurisdiction, said:

> "It can not be doubted that the Government could lawfully proceed by mandamus against the railway company for the purpose simply of compelling it to perform any duty imposed by charter or by statute.

> But that remedy would not afford the United States the full relief to which it is entitled. Here are agreements between the railway company and the telegraph company that are wholly inconsistent with the present claims of the Government. Until cancelled—because inconsistent with the Act of 1888, and prejudicial to the rights of the Government and the public—by decree to which the telegraph company is a party, those agreements constitute an obstacle in the way of the enforcement of that act and the protection of those rights. In a mandamus proceeding by the Government against the railway company, the telegraph company could not properly be made a defendant, and no judgment in mandamus, as between the United States and the railway company, would conclude the rights of the telegraph company. The United States is certainly entitled to the interposition of equity for the cancellation of the agreements under which the telegraph company asserts rights inconsistent with the Act of 1862 and the Acts amendatory thereof, as well as with the Act of 1888. *Jurisdiction in equity being acquired for that purpose, the Court, in order to avoid a multiplicity of suits, can proceed to a decree that will settle all matters in dispute between the United States, the railway company, and the telegraph company*, which relate to the general subject of telegraphic communication between the points named by Congress." (Our italics).

The Court then quotes with approval from Boyce v. Grundy, 28 U. S. 210, 215, as follows:

> "It is not enough that there is a remedy at law; it must be plain and adequate, or, in other words, as practical and effectual to the ends of justice and its prompt administration as the remedy in equity."

The Court, referring to the case of Oelrichs v. Spain, 82 U. S. 211, 228, says that in that case:

> "An objection was raised that the remedy at law was ample. The Court, observing that the remedy at law was not as effectual as in equity, said, among other things, that a '*direct proceeding in equity will save time, expense, and a multiplicity of suits, and settle finally the rights of all concerned in one litigation.*'" (Our italics).

The Court, referring to the jurisdiction of equity in cases where the remedy at law is not equally adequate, says:

> "These principles are abundantly sustained by the authorities. In 1 Pom. Eq. Jur., Sec. 181, many adjudged cases are cited in support of the proposition that 'if the controversy contains any equitable feature, or affords any purely equitable relief, which would belong to the exclusive jurisdiction, or involves any matter pertaining to the current jurisdiction, by means of which a court of equity would acquire, as it were, a partial cognizance of it, the Court may go on to a complete adjudication, and may thus establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority."

In the case at bar there is no dispute over the facts. Appellee's motion admits the facts as pleaded in appellant's bill. It is admitted that the bonds were sold for a valuable consideration; that the benefits were received by the District and apportioned among the land owners as provided by the irrigation district laws,—Section 32 99 of the Idaho Revised Codes (Set out in full in the appendix).

Under the Idaho statutes the officers of the District must levy an assessment annually for the payment of interest, and at the expiration of ten years an additional per cent. must be levied annually for the redemption of the principal. The tax is levied and paid in proportion to the benefits received from the improvements constructed or purchased from the proceeds of the bonds. In carrying out the provisions of the statute for levying and collecting assessments for the payment of interest and principal of the bonds (Section 2410 of the Revised Codes set out in the appendix of this brief), the officers of the District are acting in a fiduciary capacity, in the interest and for the benefit of the bondholders. They constitute the statutory machinery provided by law for levying the tax, conserving

the interest fund, and apportioning it as the interest coupons mature and are presented for payment. The fund is a fund levied and paid in for a special purpose and it can not be diverted or used for other purposes. The bill shows that the District has in this fund a sum considerably in excess of $3,030.00, but that it declines to use it for the payment of interest or for the purpose for which it was collected.

Dillon, in his excellent work on Municipal Corporations, Vol. 2 (5th Ed.), p. 1395, says:

> "If a municipality collects a special assessment or fund out of which the bonds are payable, it holds such fund for the benefit of the creditors entitled to enforce the obligations of the bonds, and when it has the money in its treasury, it cannot refuse to pay the obligations on the ground that the assessments are invalid or because the bonds are illegal upon grounds which inure to the benefit of the persons subject to assessment only. Among the remedies to which holders of improvement bonds are entitled is a suit in equity against the municipality and its officers for an accounting of the money which has been received from assessments and which has come into the general funds of the municipality, and in such action the bondholders may have a decree compelling the officers charged with the duty of collecting the assessments to perform their duty in that regard, on the principle that where a court of chancery takes jurisdiction of the cause for any purpose it retains it for all purposes and administers complete relief as the justice of the case may require."

The money collected for the payment of interest and now held by the District is not sufficient to meet the interest on all the bonds outstanding, but the holders of the valid bonds are entitled to their proportionate part of the money collected. Being a trust fund, it must be equitably pro rated among all the bondholders or persons entitled to share therein.

The Supreme Court of the United States, in Oelrichs v. Williams, 15 Wall 211; 21 L. Ed. 43, had before it a similar situation, and there, as here, it was contended that there was an adequate remedy at law. The Court there said:

> "Upon looking into the record it is clear to our minds, not only that the remedy at law would not be as effectual as the remedy in equity, but we do not see that there is any effectual remedy at all at law. If the injunction bonds were sued upon at law and the judgment recovered, the proceeding in equity would still be necessary to settle the respective rights of the several obligees to the proceeds. The direct proceeding in equity will save time, expense, and a multiplicity of suits, and settle finally the rights of all concerned in one litigation. *Besides, there is an element of trust in the case, which, wherever it exists, always confers jurisdiction in equity.*" (Our italics).

The Court further said:

> "Equity would have distributed the proceeds, if need be, according to its rights and the equity of the other parties in interest. In this case equity follows the law as regards the liability of the appellants, and having the proceeds in hand, will distribute them in this proceeding." (Citing cases).

In Clews v. Jamieson, 182 U. S. 461; 45 L. Ed. 1183, the Supreme Court again held that the bill was maintainable in equity because there was an element of trust in the case. It cites Oelrichs v. Williams, *supra*, and says:

> "The Court (meaning in Oelrichs v. Williams) remarked that there being an element of trust in the case, that element, wherever it exists, always confers jurisdiction in equity."

And discussing generally the principles that should control in determining whether equity will take jurisdiction

because it can afford more adequate relief than a court of law, the Court said:

> "Pomeroy in his work on Equity Jurisprudence, second edition, instances, among other equitable estates and interests which come within the jurisdiction of a court of equity, those of trusts. In Volume 1, at Sec. 151, he says: 'The whole system fell within the exclusive jurisdiction of chancery; the doctrine of trusts became and continues to be the most efficient instrument in the hands of a chancellor for maintaining justice, good faith, and good conscience; and it had been extended so as to embrace, not only lands, but chattels, funds of every kind, things in action and moneys.'
>
> "All possible trusts, whether express or implied, are within the jurisdiction of the chancellor. In this case the committee, as trustee, was charged with the performance of some active and substantial duty in respect to the management and payment of the funds in its hands, and it was its duty to see that the objects of its creation were properly accomplished. *The fact that the relief demanded is a recovery of money only, is not important in deciding the question as to the jurisdiction of equity.* The remedies which such a court may give 'depend upon the nature and object of the trust; sometimes they are specific in their character, and of a kind which the law courts cannot administer, but often they are of the same general kind as those obtained in legal actions, being mere recoveries of money. A court of equity will always, by its decree, declare the rights, interest, or estate of the *cestui que trust,* and will compel the trustee to do all the specific acts required of him by the terms of the trust. It often happens that the *final* relief to be obtained by the *cestui que trust* consists in the recovery of money. This remedy the courts of equity will always decree when necessary, whether it is confined to the payment of a single specific sum or involves an accounting by the trustee for all that he has done in pursuance of the trust, and the distribution of the trust moneys among all the beneficiaries who are entitled to share therein.' 1 Pom. Eq. Jur. Sec. 158."

In Vickrey v. Sioux City, 104 Fed. 164, the Court had before it a situation quite similar to the one at bar, though it would seem that the demand there for equitable relief was by no means as strong as it is here. There, as here, a special assessment had been made for the payment of the outstanding bonds. It was contended that the bondholders were equitably the owners of the money in the city treasury collected under the special assessment, and complainant prayed for his proper share of the fund, for a judgment against the city for the balance, and for an injunction restraining the diversion of the fund and from paying out any of the money in the special fund until complainant's rights had been duly awarded and decreed. Defendant demurred to the bill and urged that complainant had a sufficient remedy at law. The Court said:

> "It cannot be well questioned that the bonds sued on contain an absolute promise on behalf of the city to pay the amounts thereof to the payee or bearer, and, therefore, it is true that in an action at law the holders of the bonds could recover judgment for the sums due thereon against the city. It is equally true that, under the provisions of the act of the general assembly authorizing the issuance of the bonds, the city assumed the duty of creating and properly applying the sinking fund provided for in the act, and to that end was charged with the duty of levying the special assessments called for by the act, collecting the same, and making proper payment thereof to the bondholders. In these particulars the city is charged with a duty amounting to a trust. The inducement held out to the purchasers of the bonds was that the payment thereof would be provided for by the levy and collection of the special assessments upon the property abutting on the improved streets and alleys, and the bondholders have the right to call the city to account for the manner in which this trust duty has been performed. Thus, in Taylor v. Benham, 5 How. 232-274; 12 L. Ed. 130, it is said:
>
> "'Every person who receives money to be paid to another, or to be applied to a particular purpose, to

> which he does not apply it, is a trustee, and may be sued either at law, for the money had and received, or, in equity, as a trustee, for a breach of trust.' "

In Burlington Sav. Bank v. Clinton, 106 Fed. 269, suit was brought in equity by a holder of improvement bonds, and there, as here, the defendant contended that there was an adequate remedy at law, that a judgment should first be obtained for the amount due upon which mandamus could issue to enforce the levy of the necessary tax. The Court held that the bondholder was entitled to broader relief than could be obtained in the law action. Among other things, the Court said:

> "Even though it were true that a legal remedy did exist, that would not defeat the right to invoke the jurisdiction in equity, provided it be a fact that the relation held by the City of Clinton in the matter of imposing taxes to meet the indebtedness of Lyons City is that of a trustee. In such case the legal and equitable remedies would be concurrent, and either could be available of by complainant. Townsend v. Vanderwerker, 160 U. S. 171, 40 L. Ed. 383."

In Farson v. Sioux City, 106 Fed. 278, the question was again before the Court by the holder of bonds payable by special assessment, and again the Court held that jurisdiction existed in equity. The Court said:

> "It is clear that if the relation imposed upon the city with respect to the levying, collecting, and disbursement of the special taxes authorized by the act is that of a trustee, then the equitable jurisdiction cannot be questioned, and it seems equally clear that the city is a trustee with respect to the fund necessary to be raised to pay the bonds in question. Every element necessary to create a trust relationship is found in the duty imposed upon the city, it having chosen to undertake the improvement of its streets under the provisions of the act of the 20th general assembly, and having thereby obligated itself to impose, collect, and disburse the taxes provided for in the act for the

> benefit of persons purchasing the bonds. This being the fact then, as is ruled by the supreme court in Case v. Beauregard, 191 U. S. 688, 25 L. Ed. 1004, 'it may be said that whenever a creditor has a trust in his favor, or a lien upon property for the debt due him, he may go into equity without exhausting legal processes or remedies.' The averments of the bill show clearly that the case comes within the jurisdiction of equity, and that the remedy sought can only be reached through the process of a court of equity."

In Olmstead v. City of Superior, 155 Fed. 172, this question was again before the Court. The contentions urged by appellees here were urged there, and apparently fully discussed, for the Court says that, "counsel on all sides have displayed such industry and learning in the argument of this cause, the Court feels called upon to discuss the several contentions at somewhat greater length than it would ordinarily do." Taking up the identical question now under consideration, the Court said:

> "The first ground of demurrer requires but slight attention. The supplemental bill of complaint, as we read it, is properly planted in equity, and a court of law could afford no adequate relief in the premises. From the bill it satisfactorily appears that the city assumed the duty to create, administer and distribute a certain fund derived from special assessments on certain real estate, which fund was pledged for the payment of these bonds; that thereby the city became a statutory trustee, bound to preserve this fund and administer it solely and exclusively for this special purpose; that in violation of this duty, the defending city has by various methods particularly set out in the bill, encroached upon, appropriated and misapplied the funds, and has neglected and refused to pay the bonds in suit that were made a lien upon such fund. * * * It is apparent that complainant is entitled to relief, which is the peculiar province of equity to afford, and that a court of law would be powerless in the premises."

The Court cites with approval Vickrey v. Sioux City, and Farson v. Sioux City, *supra*.

The special fund before the courts in the cases cited above constituted no more a trust fund than does the special fund created by the Idaho statutes for the payment of the interest on appellant's bonds. And it is wholly immaterial whether the bonds are general obligations of the District, or can be paid only out of the special fund. Whether the special fund provided is the *exclusive* fund from which the bonds and interest can be paid is not important. It is sufficient that the law creates a special fund and the machinery for levying and collecting such fund, and that such fund has been collected, in whole or in part, and that it is not being applied to the purposes for which it was collected.

Many courts have held, in fact we know of no decision to the contrary, that when the taxpayers who have received the benefits of the improvement have paid their assessments into the special fund for the purpose of paying their pro rata part of the interest or principal of the outstanding bonds, neither the municipality nor the officers thereof can question the validity of the bonds, or the right of the bondholders to the money in such fund. The officers and the municipality are in such cases purely statutory trustees charged with the duty of apportioning the fund among the bondholders as their respective interests may appear.

McQuillin, in his late work on Municipal Corporations, Vol. 5, p. 4793, says:

> "While improvement bonds do not ordinarily create any personal liability against the municipality to pay them from general funds, and hence in such a case an action cannot be brought on the bonds to recover a general judgment against the municipality for the amount thereof, yet if the bond does not on its face purport to be payable only from the special fund, and the statute authorizing the bond issue does not limit

> the power to issue to bonds which shall be payable from the special fund created by the collection of special assessments, it is payable from general funds, and an action may be brought thereon against a municipality and a general judgment recovered. *However, in any event, the municipality is liable as a trustee for failure to collect and apply the assessment.* * * * " (Our italics).

The Circuit Court of Appeals for the Seventh Circuit, in Jewel v. City of Superior, 135 Fed. 19, referring to the trust character of the funds collected under special statutory provision for the payment of interest and principal of outstanding bonds, says:

> "The fifth assignment questions the action of the trial court in limiting the amount of his recovery to his pro rata share of the funds to which the holders of all the bonds are entitled. This fund, derivable from the assessments, was a trust fund, pledged to the payment of all of the bonds. The right of the appellant therein was only to such portion of the fund realized as the sum of his bonds bore to the entire amount of the issue of bonds. It is true that equity favors the vigilant, not the slothful; but we think it would be a manifest perversion of equity to require a trustee to commit a breach of trustee owing to *cestuis que trustent*, by taking from other bondholders and awarding to the appellant so much of the sum as would pay his bonds in full. We know of no principle of equity which would warrant such a decree."

The case of Spidell v. Johnson, 128 Ind. 235, seems directly in point. In that case bonds had been issued for certain road improvements. A controversy later arose over the payment of the taxes, and default was made on the bonds. Some of the taxes had been collected, but the money was not applied to the purposes for which the taxes had been levied and paid. The Court said:

> "The facts stated in the complaint invoke the chancery jurisdiction of the court for an accounting between officers and creditors of Ripley County with

the appellants, in respect to an alleged fund which the latter claims should in equity be applied to the payment of the bonds held by them.

"The proceedings for the construction of the public enterprise in question having resulted in fixing a lien on the lands adjudged to be benefited by the construction of the free turnpike, the lien thus fixed stood as a security for the payment of the bonds which were issued for the purpose of obtaining the money with which to carry forward the work. * * *

"Unless the proceedings which resulted in creating the lien which constituted the sole security for the bondholders were absolutely void, the security thereby afforded could not be destroyed, impaired, or rendered unavailing without affording an opportunity to those interested to be heard. There is no pretense that the proceedings were void. The judgments restraining the officers of Ripley County from enforcing the assessments having, as it were, cast a cloud upon the security of the bonds, they had the right to appeal to a court of equity to protect their property. Besides, some of the land owners having paid in part, and others having paid nothing, and the whole matter having fallen into a state of confusion, a court of law was not adequate to the task of unravelling the 'tangled skein,' and it was therefore peculiarly a subject for the chancery side of the court, to account with the county and its officers, to reinstate the liens of the assessments so far as the judgment theretofore rendered had embarassed the officers of the county in collecting what might be needed to pay off the bonds and interest."

In that case judgments had been obtained against the officers, but the taxpayers enjoined the officers from making payments. The bondholders were not parties to those proceedings and had no notice that such proceedings had been instituted. The Court further said:

"So if it be found true, as is alleged, that a valid lien had attached for the security of the appellants which has been obscured or impaired by a judgment, or by judgments to which the bondholders were not parties, the officers whose duty it is to collect the assessments should be ordered to proceed as the statute

> requires to place the amount assessed upon the lands benefited upon the tax duplicate to the end that those who have not paid may be required to pay according to law."

The all-important question in this suit is not, as assumed by the District Court, the payment of the $3,030.00 of coupons held by appellant, but the determination of the validity of the $900,000.00 of outstanding bonds of the defendant District and the ascertainment of the respective rights of the several hundred bondholders in the moneys collected, and now held by the District, for the payment of interest on these bonds, as well as their respective rights in future moneys collected from time to time for the payment of the interest and principal of such bonds, and the removal without delay of the clouds, uncertainties and suspicions that have been cast upon all of these bonds by the action of appellees and the taxpayers of the District.

Considering the large amount of bonds outstanding, and the number of people affected by the defaults and actions of appellees as charged in the bill, and the impracticability of determining within any reasonable time, in actions at law, the rights of several hundred bondholders, it would seem that there should be no serious question about the jurisdiction of equity. In no other way can the holders of the valid bonds receive prompt, full, or adequate relief. It is peculiarly a case that cannot be confined within the strict rules and limitations that circumscribe the power of law courts.

The District Court says in effect that appellant should first take a chance on an action at law, and if he cannot there secure full relief he may then resort to equity. That defendant, before seeking aid in equity, should wait until the fund collected and now held in trust by the District has been diverted to other purposes; or until there have

been further defaults. It sems apparent that the District Court failed to appreciate the embarrassment and injustice resulting to the bondholders from the present situation; it is intolerable as it is, and it should not be necessary to wait until it gets still worse. It is difficult to see how facts can be pleaded more in detail or more specifically than is done in this bill. It shows default in the payment of the coupons. It shows that such default was intentionally created. It shows that there is a fund paid in for the exclusive benefit of the bondholders, which is held in trust by the District; that it is not being applied to the purposes for which it was paid in by the taxpayers, but, on the contrary, that appellees decline to so apply it. That instead of appellees performing their statutory duty of assisting the bondholders in the collection of the taxes, they are encouraging the defaults. That already a suit has been commenced in the State court between a taxpayer and the District, which has for its purpose the obtaining of a decree declaring the bonds invalid and the cancellation of all of the delinquent taxes. That other similar suits may be instituted at any time and carried to final judgment without notice to or knowledge thereof by the bondholders, and that no proper defense on behalf of the bondholders will be made by appellees in such suits.

It would seem that unless the Court in this suit takes jurisdiction and determines these controversies promptly a most complicated situation and interminable litigation will confront all the bondholders, the appellees and the taxpayers of the District.

Since the present suit was instituted default has been made on two additional series of coupons, viz., the coupons maturing July 1st, 1914, and January 1st, 1915; and while the record does not show it, it will not be denied that no interest tax whatever was levied by appellees in 1914.

Every six months additional defaults will be made in the payment of interest, and the bonds do not begin to mature until January 1st, 1921, when only five per cent (5 per cent) thereof become due. The last of the bonds outstanding do not mature until January 1st, 1931.

Manifestly, the bondholders cannot wait until both the principal and interest become due. In all fairness the cloud that has been cast upon the validity of their securities should be determined promptly, for as long as it remains it must be conceded that the bonds have no market value and are unsalable, and that neither the principal nor interest thereon will be paid by the District.

The District Court has suggested that some of the allegations of the bill are general conclusions. It is not clear how they could be made more specific without waiting until the situation has become hopelessly involved. This is not a case where any one individual is spokesman for all. No particular statement of any particular individual can be taken. We are dealing here with a large number of individuals, and it is the action of the community and the officers and taxpayers as a whole that is set forth in the Bill. This can only be stated in general terms. It must necessarily be in the nature of conclusions drawn from many separate and individual statements and actions.

A bill in equity in a case of this kind should not be subjected to the same rule of analysis as a criminal indictment against an individual. And there are sufficient facts admitted and conceded by the motion to entitle appellant to equitable relief. The holders of the securities issued in this case are entitled to have the uncertainties and the clouds which have been cast upon their securities

removed. They are entitled to have their interest in the trust fund determined.

Pomeroy, in his excellent work on Equity Jurisprudence, Vol. 6, Sec. 729, says:

> "It has been held that a cloud upon the title to personal property, even by matter appearing of record, cannot be removed; but there seems to be no good reason for thus restricting the jurisdiction, and the instances are not infrequent where it has been exercised, in cases of void recorded chattel mortgages, spurious issues of shares of stock, etc. (Citing many authorities)."

In Sherman v. Fitch, 98 Mass, 59, there was a bill in equity by the assignees of an insolvent corporation praying for a decree that a recorded mortgage of personal property held by defendant might be declared void. It was alleged that a sale of the property by the assignees, while the title to it remained in dispute, would be detrimental to the creditors. It was there contended that the plaintiffs had adequate remedy at law. The Court says:

> "We cannot see that the complainants, upon this state of facts, have any remedy at law. They have no cause of action against the defendant. They are in possession of the property, and he has not disturbed their possession. He might bring an action against them, but he does not choose to do it. In the meantime there is a cloud upon their title which seriously affects its value. The mortgage is upon record, and it is evident that they cannot sell the property with any prospect of obtaining its fair value, because the purchaser would know that he exposes himself to an action, if the defendant's claim is well founded."

The Court, after referring to another case where a bill in equity had been entertained to set aside an execution upon land in which the debtor owned a reversion, says:

> "The same doctrine was affirmed in Martin v. Graves, 5 Allen 601; in which the general rule is

stated, that 'whenever a deed or other instrument exists, which may be vexatiously or injuriously used against a party after the evidence to impeach or invalidate it is lost, or which may throw a cloud or suspicion upon his title or interest, and he cannot immediately protect or maintain his right by any course of proceedings at law, a court of equity will afford relief by directing the instrument to be delivered up and canceled, or by making any other decree which justice and the rights of the parties may require.' 2 Story Equity, Sec. 694.

"This statement of the principle is precisely applicable to the case at bar."

In Voss et al. vs. Murray et al. 50 Ohio St. Rep. 19, the Court had before it a case where an attaching creditor found that the personal property attached was covered by chattel mortgages of doubtful validity but the existence of the mortgages greatly depreciated the selling value of the property, and suit was brought by the attaching creditor against the mortgagees to have the mortgages declared invalid, or, as the Court said, "to facilitate a sale of the attached property by removing what is claimed to be a cloud upon the title of the plaintiffs under their attachment." The Court, in holding that such a suit could be maintained in equity, says:

"That one who, as an attaching creditor, has acquired a lien upon personal property, may maintain a suit for the purpose of ascertaining the extent or existence of adverse claims to the same property, or removing clouds upon it that would affect its sale in the proceeding, is supported by principle as well as authority. The property being in the custody of the Sheriff under the attachment, the creditor has no possessory action against other claimants or lien holders by which the validity of their claims can be determined, and, as they may not choose to institute such an action, he is without any remedy at law, other than to sell the property subject to the clouds upon it, which is not an adequate remedy. For these reasons

similar suits have been sustained. Sherman vs. Fitch, 98 Mass. 59; Jones on Chattel Mortgages, Sec. 348."

In Rosenbaum vs. Foss, 4 S. Dak. 184: 56 N. W. 114, the defendant sought to remove a cloud on personal property created by a mortgage of doubtful validity. The Court, after discussing certain provisions of the statute, says:

> "But an action in equity, independently of the statute, is not confined to removing clouds upon title to real property, but extends to cancellation of negotiable paper before maturity, bonds, policies of insurance, settlements, compromises, awards, judgments and chattel mortgages. (Citing many cases.) * * * We are unable to discover any principle of law that would prevent a junior mortgagee from maintaining an action to cancel a prior mortgage, void or voidable as to him, which has a tendency to lessen the value of his mortgage, or which may cause him serious injury, where, as in this State, neither party acquires title to the property, but only a lien thereon, before foreclosure and sale * * *."

In Stebbins vs. Perry County, 167 Ill. 567: 47 N. E. 1048, the Court had before it a suit brought by a stockholder to determine the validity of certain other stock outstanding. It was there alleged that as long as the defendant was recognized as a stockholder the stock of complainant was depreciated, and he was in danger of losing his just share of the earnings and dividends of the company; that there was danger that defendant would fraudulently assign or transfer his certificates and thereby make necessary a multiplicity of suits to enforce and establish complainant's rights. The Court held that it was a proper case for equitable interposition.

In Earle vs. Maxwell, 86 S. C. 1; 67 S. E. 962: 138 American State Rep. 1012, the Court had before it a case to remove a cloud from, or quiet title to, personal property

of an insolvent, to the end that the same might be sold free of the cloud or pretended claim of others. The Court said:

> "While some authorities hold otherwise, we think there can be no doubt that a complaint to remove a cloud on the title to personal property may be maintained. Pomeroy's Remedies, Sec. 369. Any distinction between real estate and personal property in this respect must be purely artificial, and tend to hinder the practical administration of justice. It is true that the trustee is not in possession, and the general rule is that one out of possession, and claiming the title and right of possession, cannot maintain an action to remove a cloud on his legal title against another person in possession, for the reason that there is an adequate legal remedy by an action to recover possession when the title to land is involved, and by action of claim and delivery when the title and right of possession of personal property is involved. * * * But in this case the plaintiff is not entitled to possession, his property interest being a contingent remainder. The question which he presents to the Court is whether he has, as trustee, a right to assign this interest. If he has the right to sell a contingent interest of the bankrupt, then it is manifestly important to the trust estate that the cloud cast upon that right by the claim of the bankrupt that the purchaser will take nothing, should be cleared away before the sale. The only remedy which the plaintiff has to prevent a sacrifice sale of the trust property by reason of this claim is to ask the Court to determine his right to sell before he offers the property. The right and duty of the plaintiff to have a fair sale of the property being evident, the Court should not withhold the relief asked."

In Magnuson vs. Clithero, 101 Wis. 551, 77 N. W. 882, the Court had before it a case where a cloud was thrown upon the validity or ownership of a mortgage outstanding. The owner of the mortgage brought suit to have her title quieted. The plaintiff deraigned title to the mortgage through a decree of divorce, the validity of which was in doubt. After the divorce decree had been entered it was amended or corrected by a subsequent action between the

same parties. The Court, referring to the divorce proceedings through which title was deraigned, says:

> "When the second action was commenced, ostensibly to correct the divorce judgment, plaintiff was in possession of the notes and mortgage, claiming title thereto, which was liable to be questioned by the mortgagor, Electa Clithero, and by Elias Magnuson as well. Under those circumstances a court of equity had jurisdiction to quiet plaintiff's title to the property. Actions for that purpose are infrequently brought where the subject is personal property, but the jurisdiction of the Court in such cases is as well defined and as well understood as where the subject is real estate. Pomeroy's Remedies and Rem. Rights, Sec. 369. Plaintiff's situation was such that she had no way of remedying the mischief growing out of the threatened dispute as to her title, except to appeal to equity for a decree silencing those from whom such dispute might come. Hence upon the plainest principles of equity jurisdiction, it was in the power of the Court to entertain an action *quia timet* in plaintiff's behalf and to make the proper decree. The complaint stated the facts requisite to a judgment setting at rest plaintiff's fears as to her title, and the prayer, though in the main for a change in the divorce judgment, was broad enough to cover a judgment *quia timet*."

In the case of The New York and New Haven R. R. Co. vs. Schuyler et al. 17 N. Y. 592, the Court had before it a case where officers of the corporation had issued a large amount of spurious stock. Such stock had been outstanding for many years and was in the hands of numerous persons, and on its face was in all respects like the stock legally authorized and issued. The case is substantially parallel with the case at bar, the only difference being that one relates to stock and the other to bonds. The existence of the suprious stock threw a cloud upon all stock outstanding and greatly depreciated the market value thereof. An action at law had been brought by a holder of

one of the spurious certificates, and the Court had held that they were absolutely void and that neither the corporation nor the holders of the genuine stock were affected by the spurious certificates, and that the latter were not entitled to damages or reimbursement from the corporation. Suit was brought by the corporation for the purpose of removing the cloud cast upon the genuine certificates and securing a judgment determining what certificates were valid and what were invalid. The Court says:

> "There is no head of equity jurisdiction more firmly established than that which embraces the cancellation of instruments which are capable of a vexatious use if the means of defense at law may become impaired or lost, or when they are calculated to throw a cloud upon the title or interest of the party seeking relief. But the jurisdiction does not universally attach on the mere ground that the deed or other contract is invalid. * * * If, on the other hand, the invalidity does not appear on their face. The jurisdiction is not confined to instruments of any particular kind or class. Whatever their character, if they are capable of being used as a means of vexation and annoyance, if they throw a cloud upon the title or disturb tranquil enjoyment of property, then it is against conscience and equity that they should be kept outstanding, and they ought to be cancelled. These principles of general jurisprudence are believed to be decisive in favor of the right of this corporation to demand the cancellation of the false stock and to maintain a suit in equity for that purpose. On their face, as we have seen, the certificates of this stock are indistinguishable from those which are genuine and true. They confer, therefore, upon each holder a prima facie right as a stockholder. The evidence of such right must in every case be repelled by showing that the certificate does not represent the actual stock of the company, and it is impossible to say that the means of repelling these claims will always be as perfect as they were when the frauds in which they originated were first discovered."
>
> "It is true, we held in the case already mentioned, that the company could successfully defend an action

brought against it for refusing to recognize one of these certificates; but the defense rested, as it must if actions were to be brought upon any other certificate, upon the extrinsic facts to be proved. Conceding, even, that every one of these claims may be defended, at whatever distance of time and under whatever circumstances they may be pressed upon the corporation, this by no means meets the equity of the case. If, as we have held, no just claim against the corporation arises out of these certificates, it is plainly unconscionable and inequitable that they should be kept on foot. *Their very existence, outstanding, is unjust, because it must of necessity exercise a most depressing influence upon the real stock of the corporation. We all know how sensitive are values in property of this description; and what conceivable facts could cast a deeper shadow over every genuine stockholder's interest than a spurious issue of* $2,000,000 *of stock, evidenced by certificates apparently valid, and under which every holder boldly and confidently asserted his claim? The fact is not alleged in the complaint, but we can scarcely err in supposing that, on the discovery of these frauds, every share of valid stock must at once have lost nearly one-half of its market value. That depression must continue, in a greater or less degree, while the certificates are allowed to stand. A decision against one of them, in an action founded upon it, is not a determination against any other one, and cannot, while the others are outstanding, restore to the genuine stock the value which justly belongs to it. To say that the share holders must remain in such a condition of insecurity and doubt, must hold their shares under such a depression, would be to sanction a species of injustice which ought to be prevented. These shares of stock are a description of property as much entitled to invoke the protective remedies peculiar to courts of remedy as any other.*" (Our italics.)

Appellant brings this suit on behalf of himself and all other bondholders of said District who may desire to join in this proceeding, and there is every reason why the controversies that have arisen and the validity of the bonds should be determined without delay, and immediate relief

granted. Delay means loss of interest to the holders of the securities in addition to the great loss in the market value thereof, and it means virtual bankruptcy to the District. For, if the interest is allowed to accumulate for a number of years, the tax that will have to be levied to meet the accumulated interest will be so large that it cannot be denied the taxpayers may not be able to bear the burden. These bonds are, under the law, made payable serially, to the end that the tax burden during any one year shall not be excessive.

Delay means loss of evidence and loss of witnesses, and it would seem to the best interest of all parties that the entire situation should be submitted to the Court with the least delay possible. For until the status of all the bonds has been determined, full relief can not be obtained by any of the bondholders. It should be noted, also, that the bonds are payable to bearer, and are not only negotiable in form but are expressly made negotiable by the statute (Sec. 2397, Revised Codes, set out in Appendix).

Wherefore, appellant submits that the order of the District Court dismissing the Bill should be set aside, and the District Court directed to hear and determine the issues raised by appellant's bill.

Respectfully,

J. H. RICHARDS,
OLIVER O. HAGA,
McKEEN F. MORROW,
Solicitors for Appellant.
Residence, Boise, Idaho.

APPENDIX.

Provisions of Idaho Revised Codes relative to irrigation district bonds and apportionment of benefits:

Form of Bonds.

"Section 2397. The bonds authorized by any vote shall be designated as a series and the series shall be numbered consecutively as authorized. The portion of the bonds of a series sold at any time shall be designated as an issue, and each issue shall be numbered in its order. The bonds of each issue shall be numbered consecutively, commencing with those earliest falling due, and they shall be designated as eleven year bonds, twelve year bonds, etc. They shall be negotiable in form and payable in money of the United States as follows, to-wit: At the expiration of eleven years from each issue, five per cent of the whole number of bonds of such issue; at the expiration of twelve years, six per cent; at the expiration of thirteen years, seven per cent; at the expiration of fourteen years, eight per cent; at the expiration of fifteen years, nine per cent; at the expiration of sixteen years, ten per cent; at the expiration of seventeen years, eleven per cent; at the expiration of eighteen years, thirteen per cent; at the expiration of nineteen years, fifteen per cent; at the expiration of twenty years, sixteen per cent; *Provided*, That such percentages may be changed sufficiently so that every bond shall be in an amount of one hundred dollars or a multiple thereof, and the above provisions shall not be construed to require any single bond to fall due in partial payments. Interest coupons shall be attached thereto, and all bonds and coupons shall be dated on January first or July first next following the date of their authorization and they shall bear interest at a rate of not to exceed seven per cent per annum, payable semi-annually on the first day of January and July of each year. The principal and interest shall be payable at the place designated therein. Said bonds shall be each of the denomination of not less than one hundred dollars nor more than one thousand dollars, and shall be signed by the president and secretary, and the seal of the board of directors shall be affixed

thereto. Coupons attached to each bond shall be signed by the secretary. Said bonds shall express on their face that they were issued by the authority of this title, naming it, and shall also state the number of the issue of which such bonds are a part. The secretary and treasurer shall each keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser. * * * "

Apportionment of Benefits.

"Sec. 2399. Whenever the electors shall have authorized an issue of the bonds as hereinbefore provided, the board of directors shall examine each tract or legal subdivision of land in said district, and shall determine the benefits which will accrue to each of such tracts or subdivisions from the construction or purchase of such irrigation works; and the cost of such works shall be apportioned or distributed over such tracts or subdivisions of land in proportions to such benefits; and the amount so appropriated or distributed to each of said tracts or subdivisions shall be and remain the basis for fixing the annual assessments levied against such tracts or subdivisions in carrying out the purpose of this title. Such board of directors shall make, or cause to be made, a list of such apportionments or distribution, which list shall contain a complete description of each subdivision or tract of land of such district with the amount and rate per acre of such apportionment or distribution of cost, and the name of the owner thereof; or they may prepare a map on a convenient scale showing each of said subdivisions or tracts with the rate per acre of such apportionment entered thereon; *Provided*, That where all lands on any map or sections of a map are assessed at the same rate a general statement to that effect shall be sufficient. Said list or map shall be made in duplicate and one (1) copy of each shall be filed in the office of the State Engineer and one (1) copy shall remain in the office of said board of directors for public inspection. Whenever thereafter any assessment is made either in lieu of bonds, or any annual assessment for raising the interest on bonds, or any portion of the principal, it shall be spread upon the lands in the same proportion as the assessment of

benefits, and the whole amount of the assessment of benefits shall equal the amount of bonds or other obligations authorized at the election last above mentioned."

Payment of Bonds and Interest.

"Sec. 2405. Said bonds and the interest thereon shall be paid by revenue derived from the annual assessment upon the land in the district; and all the land in the district shall be and remain liable to be assessed for such payment."

Levy of Assessment.

"Sec. 1410. At its regular meeting in October, the board of directors shall levy an assessment upon the lands in said district upon the basis, and in the proportion, of the list and apportionment of benefits approved by the court as hereinbefore provided, which assessment shall be sufficient to raise the annual interest on the outstanding bonds. At the expiration of ten years after the issue of said bonds of any issue, the board must increase said assessment, as may be necessary from year to year, to raise a sum sufficient to pay the principal of the outstanding bonds as they mature. The secretary of the board must compute and enter in a separate column of the assessment book the respective sums, in dollars and cents, to be paid as an assessment on the property therein enumerated. When collected, the assessment shall be paid into the district treasury, and shall constitute a special found, to be called 'Bond Fund of.....Irrigation District.' In case any assessment should be made for the purpose contemplated by a bond authorization, it shall be entered in a separate column of the assessment book in the same manner as the bond fund; and when collected shall constitute the 'Construction Fund of.....Irrigation District.'"